

DECISION AND ORDER

Decision Issue Date Thursday, July 26, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): NICOLE CANEJO

Applicant: NICOLE CANEJO

Property Address/Description: 74 ROYAL YORK RD

Committee of Adjustment Case File Number: 17 147039 WET 06 MV (A0390/17EYK)

TLAB Case File Number: 18 111586 S45 06 TLAB

Hearing dates, June 12, 2018; July 18, 2018

Name	Role	Representative
Nicole Canejo	Appellant	Ron Kanter, Daniel Litsos
Martin Rendl	Expert witness	
Richard Pernicki	Expert witness	
City of Toronto	Party	Daniel Elmadany
Anil Seegobin	Expert Witness	
Rod Mackie	Participant	
Gord Passfield	Participant	
Emily Perkins-Young	Participant	

DECISION AND ORDER DELIVERED BY T. YAO

Nicole Canejo, an experienced daycare operator, wishes to convert 74 Royal York Road to a day care centre. She needs the following variances

Table 1. Variances sought for 74 Royal York Road			
		Required	Proposed
From Toronto-wide harmonized Zoning By-law 569-2013			
1	Maximum building length in RM zone	17 m	22.4 m
2	Min. side yard setback	1.2 m	North side yard setback is .58 m
From former City of Etobicoke By-law (Mimico Zoning Code)			
3	Front yard setback for nursery schools	6 m	1.67 m
4	Minimum side yard setback	0.9 m	North side yard setback is .58 m
5	Landscaped open space	25%	12.5% ¹

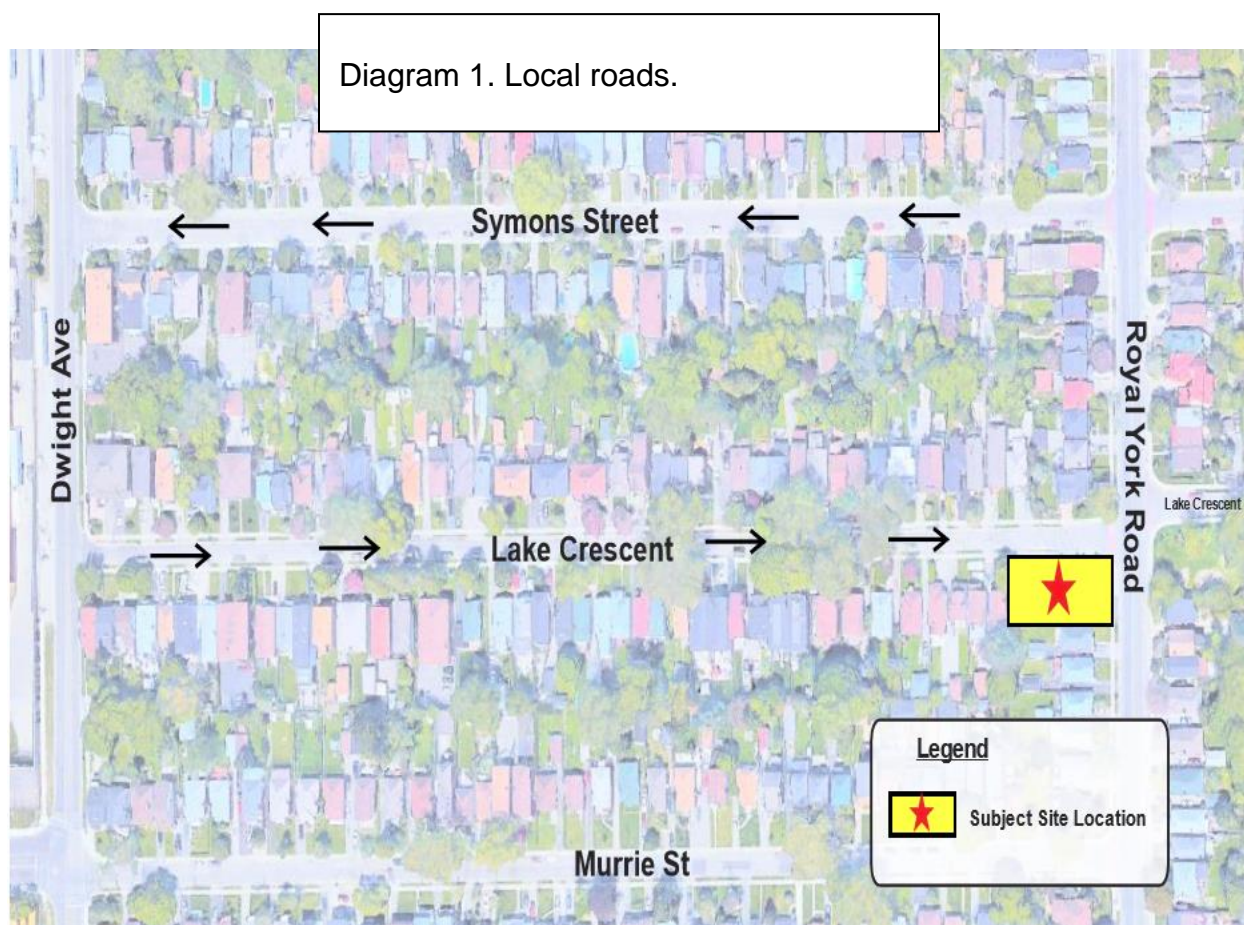
Background

The subject building is a former electronics repair shop located on the south west corner of Royal York Road and Lake Crescent.

Local Road network

¹ Ms. Canejo originally sought a variance for 13.8% landscaped open space. This has been reduced even further to provide for improvements suggested by Mr. Seegobin.

Diagram 1 below², taken shows the network near the subject site. Lake Crescent is one way eastbound. Motorists wishing to access the site from Royal York will have to travel west on Symons or Murrie, take Dwight to get to Lake Crescent, and then travel east on Lake Crescent. The sole entrance to the proposed day care centre is on the south side of Lake Crescent, by which parents will access seven parking spaces at the back of the building. After leaving the site, the motorist will continue about 30 m to the Lake Crescent/Royal York intersection and then continue the journey.



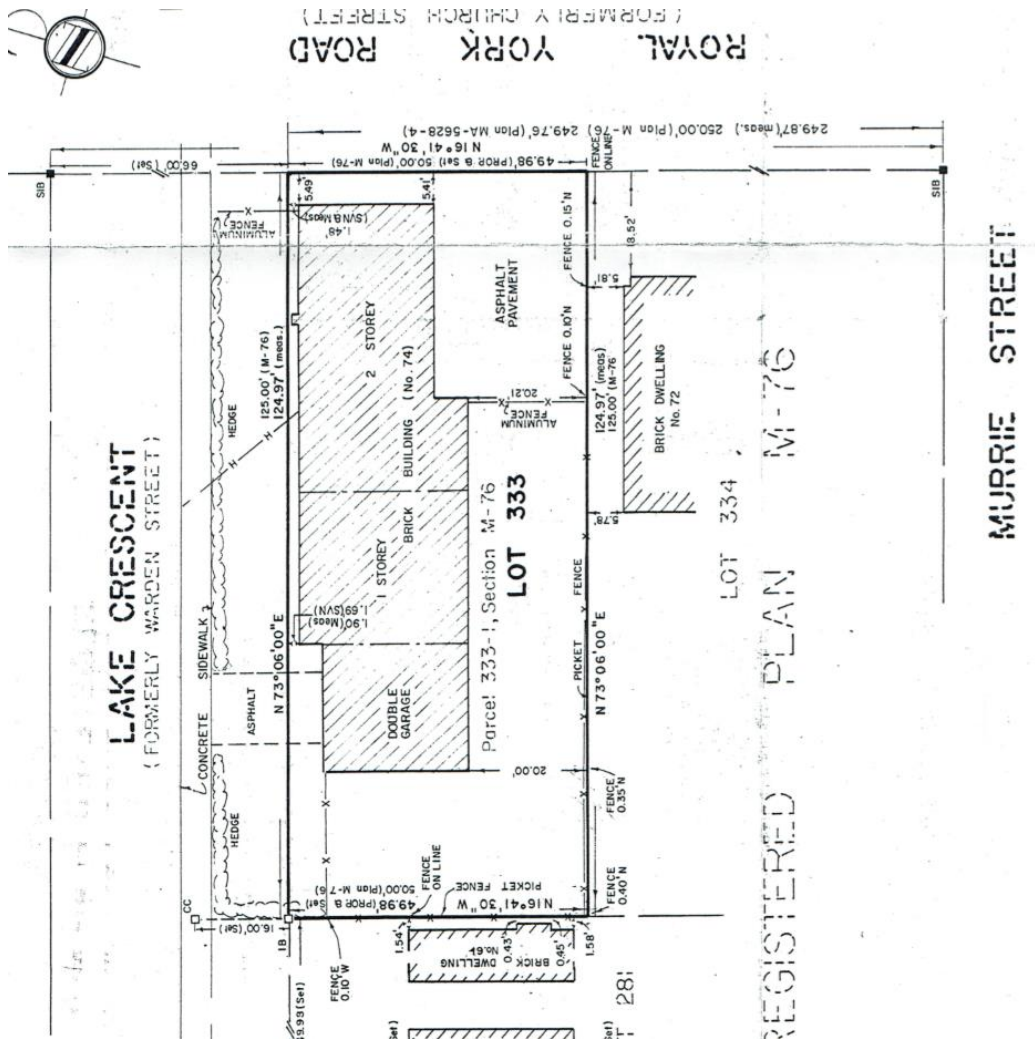
The setbacks in neighbourhood context

The property is 18.23 m (63 ft.) wide and 38.11 m (125 ft.) deep, with a long, two storey building oriented in the east-west direction. The building is unlike residential buildings along Royal York in that it has a much smaller front yard setback, 5.64 ft (compared to 18.52 feet for the next-door residential property 72 Royal York). The small front yard setback reflects the need for the glass fronted building to be close to the sidewalk. It has a smaller side yard, 1.48 feet (5.81 feet for 72 Royal York); no doubt

² From Mr. Pernicki's report (Mr. Pernicki's is Ms. Canejo's transportation engineer).

reflecting the lack of need for a corner commercial building to be set back from the flanking sidewalk. Table 1 shows the required setbacks are 6 m (20 feet) and 1.2 m/.9 m (4 feet/3 feet) respectively.

Diagram 2. Survey 1984



Since the zoning by-law cannot anticipate every situation, it was likely that any application for variances would have to recognize the anomalous former use and setbacks.

Zoning Provisions

There are two variances that are **not** being sought:

- the use of the lot as a day care centre; and
- the number of parking spaces required.

As has been explained in other TLAB decisions, Toronto's current zoning by-law, passed in 2013, is a City-wide by-law to harmonize zoning across the City. It "superseded" the previous zoning by-law (the Etobicoke Code), which had permission for a "nursery school" and "home daycare" since at least 1975. Development applications have to be examined under both by-laws because of appeals against the (later) harmonized by-law are still outstanding. Both by-laws permit a day care centre in this zone.

The second "non-variance" relates to the number of parking spaces. The Etobicoke Code requires one parking space for every staff member; the centre will have nine staff and nine parking spaces. The harmonized Toronto-wide bylaw requires three parking spaces. The major part of the evidence in this case was about whether the Etobicoke Code's requirement of nine spaces were enough to prevent "spillover effects", i.e., congestion on Lake Crescent from cars stopping in the parking aisle etc. as parents were unable to find a parking space during the morning drop-off.

The history of Ms. Canejo's application

In 2017, the original application envisioned 19 staff and 90 children, with four on-site parking spaces being supplied. The Etobicoke Code required 19 parking spaces for this initial proposal.

Luigi Nicolucci, Manager Traffic Planning/R-O-W Management, had the following concerns:

Significant parking shortfall shortfall of 15 parking spaces;

Two tandem spaces; and

No on-site pick up and drop off

Ms. Canejo revised the proposal to reduce the number of children from 90 to 54, and the number of staff from 19 to 9. The existing double car garage at the rear of the site would be demolished to create surface parking. In all, she would provide seven spaces in the rear and two in the front. Staff from both Planning and Traffic Planning Departments advised the Committee of Adjustment that they had no objections to the

variances. Traffic Planning's position was premised on ten conditions being attached to any approval.; the most important of which required all drop-off and pick-up activities to take place on site.

Despite staff non-objections, on January 11, 2018, the Committee of Adjustment refused the variances; and Ms. Canejo appealed.

The TLAB Notice of Hearing specified March 14, 2018 as the date to file a Notice of Intention to be a Party, and the City for reasons unknown failed to file such notice by this date. On March 29, 2018, the City brought a motion to be permitted to become a party, which was successful. A follow-up TLAB Order³ states "Mr. Elmadany (the City's lawyer) stated he would call "one witness, who would not be testifying to the minor variances, but to the implementation of one of the conditions"; in other words, the City would be confining itself to transportation issues. On May 8, 2018, the City filed the Witness Statement of Anil Seegobin, a partner with Nextrans and in private practice as a transportation engineer. Mr. Seegobin was retained to give evidence contrary to the position taken by the City's own Transportation Planning Department.

MATTERS IN ISSUE

I must be satisfied that the application meets Provincial Policy and the four tests under s. 45(1) of the *Planning Act*. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

The position of the City was to oppose the granting of the variances, based on the above tests. This is despite the fact the use is permitted, the number of parking spaces complies with both zoning by-laws, and that conditions were imposed by Traffic Planning staff to ensure the proper functioning of the site. The City's position is that the scale of the day care was too large and that traffic spillover effects would occur that were not in the public interest and hence constituted unacceptable adverse impacts

The City raised two additional arguments: that the proposal would not comply with the governing legislation for day care centres. (The *Child Care and Early Years Act, 2014*) and it requested that I should make a finding in that regard. If so, I was bound not to approve the variances since they did not comply with applicable law (which is the test for issuance of a building permit under *the Building Code Act*). I reject these two arguments as this test is not set out in s. 45(1) of the *Planning Act* and it appears to me

³ May 4, 2018

that I would be exceeding my jurisdiction by applying those pieces of legislation. These Acts are the home Acts for the director under the *Child Care Act* and the Chief Building Official and these matters fall under those officials to fulfil their duties under those Acts.

EVIDENCE

I heard from Martin Rendl, urban planner, and Richard Pernicki, transportation engineer, for Ms. Canejo, and Mr. Seegobin, for the City. I qualified all three as being able to give opinion evidence in their respective fields.

I also heard from three participants.

Emily Perkins-Young (70 Murrie St)

Ms. Perkins-Young lives a five-minute walk away from the proposed daycare centre and anticipates the birth of her first child two months from now. She has had difficulty finding and getting on the waiting list of a day care centre. She expressed an interest in the proposed day care as a client and was supportive of the variances as being desirable for the appropriate use of the land.

Rod Mackie (62 Lake Cr)

Mr. Mackie's witness statement indicated he would deal only with "planning and Transport's input". Nonetheless he opposed the granting of the variances on a great number of grounds, raising concerns of increased traffic, traffic movements and conflicts spilling out onto Lake Crescent, nearby condo growth, and blocking driveways. I shall return to Mr. Mackie's evidence in the section "The risk of spillover".

Gord Passfield (73 Lake Cr)

Mr. Passfield echoed Mr. Mackie's traffic evidence. In addition, he interviewed another day care operator and had studied the *Child Care and Early Years Act, 2014*, (which I will just shorten to "*Child Care Act*"), and postulated that the operator would contravene O. Reg. 137, which appears to require a certain amount of outdoor space for each child⁴. While some issues under the *Planning Act* may be related to the *Child Care Act*, I was not persuaded that I have jurisdiction to deal with that Act.

⁴ *Outdoor play space*

24. (1) Every licensee shall ensure that each child care centre it operates that has a program that runs for six hours or more in a day has an outdoor play space that is at least equivalent to 5.6 square metres for each child based on the licensed capacity, unless otherwise approved by a director.

Since the City is taking a like interest to Messrs. Mackie and Passfield in opposing Ms. Canejo's application, I will accept Mr. Seegobin's expert transportation evidence in preference to Mr. Mackie and Mr. Passfield, who are not qualified experts. However, I will discuss where Mr. Seegobin's evidence differed from Mr. Pernicki's on important issues. But ultimately, this is a planning decision and the City's failure to elicit planning evidence on the four tests made the task of denying the variances difficult for Mr. Seegobin.

ANALYSIS, FINDINGS, REASONS

My first task is to consider the higher order Provincial documents. It is rare that a policy addressing the entire province will be fine grained enough to assist a decision affecting a single lot, but this is one such case.

Policy 1.1.b of the Provincial Policy Statement sets out policies that promote "healthy, liveable and safe communities" that include housing, employment, and parks and "institutional uses" and "other uses to serve long term needs", which I interpret to include day care centres⁵. These policies are continued in the Growth Plan which promotes "complete communities": that is, "life cycle" communities (my words) that have everything its inhabitants need from cradle to grave⁶.

I find the variances necessary to introduce a day care centre at the subject lands are consistent with the Provincial Policy Statement and conform to the Growth Plan.

⁵ 1.1 Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns

1.1.1 Healthy, liveable and safe communities are sustained by: . . . b) accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;

⁶ Complete Communities [means] Places such as mixed-use neighbourhoods or other areas within cities, towns, and settlement areas that offer and support opportunities for people of all ages and abilities to conveniently access most of the necessities for daily living, including an appropriate mix of jobs, local stores, and services, a full range of housing, transportation options and **public service facilities**. Complete communities are age-friendly and may take different shapes and forms appropriate to their contexts. (my bold)

I interpret "public service facilities" as including day care services.

The definition of "public service facilities" is "Lands, buildings and structures for the provision of programs and services provided or subsidized by a government or other body, such as social assistance, recreation, police and fire protection, health and educational programs, and cultural services. *Public service facilities* do not include *infrastructure*." (italics in original)

Mr. Rendl's "four tests" analysis

Since Mr. Rendl, Ms. Canejo's planner, was the sole person qualified to give planning evidence that touch on whether the four tests under s. 45(1) of the *Planning Act* are met, his evidence is uncontradicted, was reasonable and I accept his conclusions. I will summarize his evidence very briefly.

Intent of the Official Plan

This application is a repurposing of a "corner store"-type building in a low rise older residential neighbourhood. Such uses are not uncommon and predate the zoning by-law. The latest use at the site is an electronics repair store (TVs, blenders and other appliances, according to Mr. Passfield). If this were new, it would not be permitted by the zoning by-law nor the Official Plan. However, since it is legal nonconforming, the Official Plan recognizes and legalizes such legacies from the past ⁷.

This is a development application that moves such legacies to a twenty-first century use that is both encouraged by the Official Plan and legally permitted by the zoning by-law. Mr. Rendl performed a detailed Official Plan analysis, which will not be repeated here. He noted day care centres are as fully a part of neighbourhoods as are schools and homes.⁸ Neighbourhood day care centres reduce auto trips⁹ and are part of the essential "building blocks" of communities.¹⁰ Mr. Rendl concluded that the proposal maintains the general intent of the Official Plan and I agree.

⁷ 4.3. Small-scale retail, service and office uses are permitted on properties in Neighbourhoods that legally contained such uses prior to the approval date of this Official Plan.

⁸ When we think of our neighbourhoods we think of more than our homes. Our trees, parks, schools, libraries, community centres, **child care centres**, places of worship and local stores are all important parts of our daily lives. Increasingly, people work in their neighbourhoods, both in home offices and in local stores and services. 2-23 (my bold)

⁹ To maintain the residential amenity of Neighbourhoods, new small-scale retail, service and office uses will: a) serve the needs of area residents and potentially reduce local automobile trips;

¹⁰ 3.2.2 Community Services and Facilities Addressing the quality of life and health and well-being of Toronto's communities requires effective and co-ordinated planning, the involvement of all human services sectors and investment in a comprehensive social infrastructure. Social infrastructure includes the whole system of government and community resources, programs, facilities and social networks that contribute to people's health, safety, mobility and wellbeing. . . . Locally-delivered community services also form part of the essential support to people living and working in Toronto and are the building blocks of our neighbourhoods. These community services are as important to the City's future as "hard" services like sewer, water, roads and transit.

Intent of the zoning by-law

Variance 1. Building length. As explained previously, after demolition of the garage, the new building will be 22.4 m, a reduction from the previous length of about 28 m, closer to the intent of the by-law and a more favorable situation for the residential neighbour to the west.

Variances 2,3, and 4. The purpose of these zoning by-law provisions, in Mr. Rendl's opinion, is to provide appropriate space between the building and its property lines. He said,

In this case the building exists today where it does not satisfy certain setbacks in the Etobicoke code and the new harmonized by-law. So, we're recognizing an existing condition. The construction is not creating any of the setback variances

Variance 5. Landscaped open space is 12.5% instead of 25%. The landscaped area is the shaded square to the south of the building (towards the bottom of Diagram 3, below). The parking spaces are arranged as follows:

- A row of five spaces at back of the lot (shown by the top arrow);
- two parking spaces on the other side of the parking aisle (middle arrow); and
- two in the front, accessible from Royal York (bottom arrow pointing upwards).

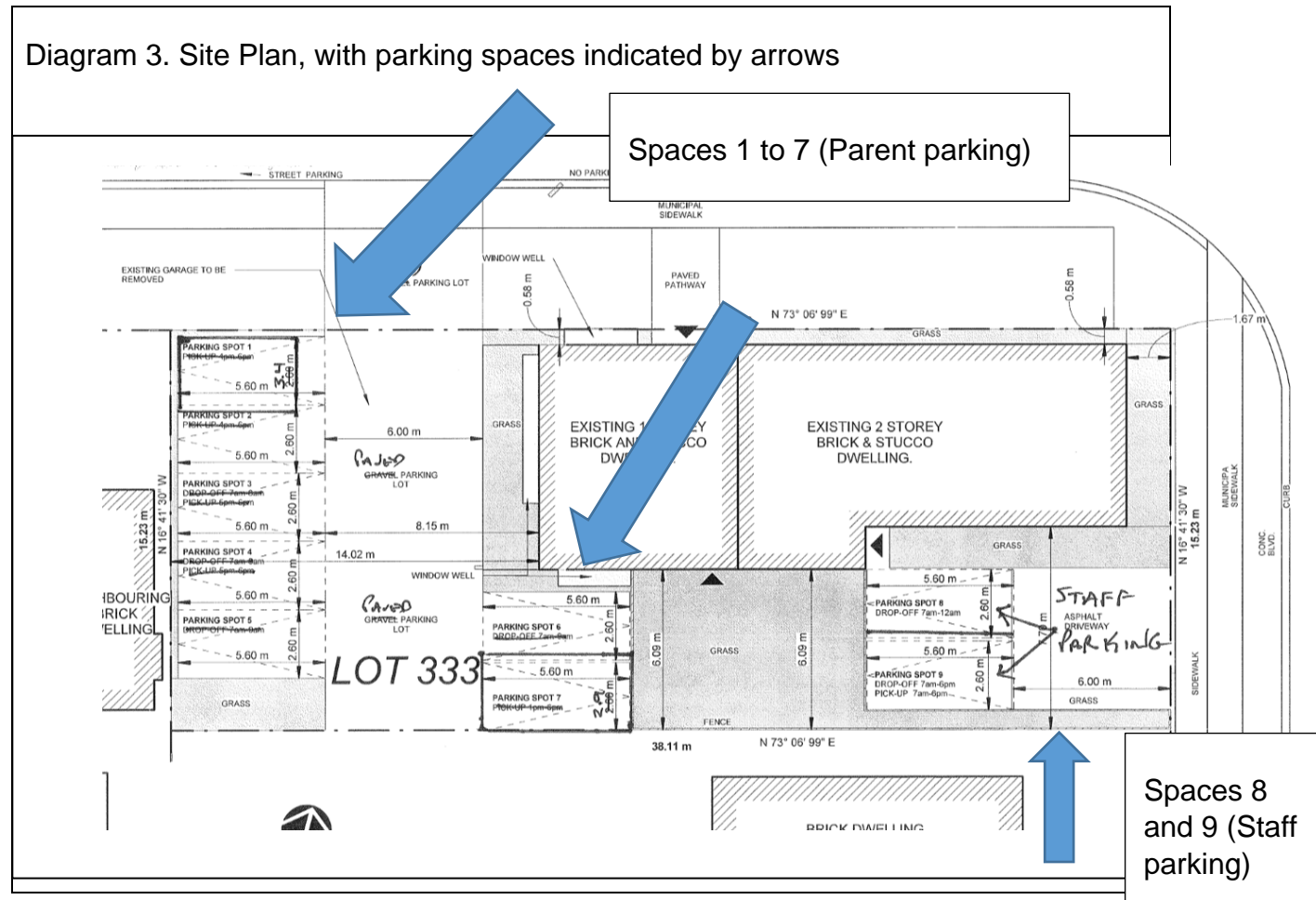
Spaces 1 to 7 in Diagram 3, ~~next page~~, are accessible from Lake Crescent and were the main focus of this hearing. At Mr. Seegobin's suggestion, accepted by Mr. Pernicki, one of the bank of five spaces will be an accessible parking space. The spaces near the building (6 and 7) will be readjusted to permit a wider space next to the fence. Mr. Pernicki pointed out that the leftover space east of the staff spaces at the front (8 and 9) could be used for informal tandem arrangements should the need arise.

To return to the issue of landscaped open space, there is a small amount of grass on the boulevard on the north lot line (not counted, as it is not on the lot), and shaded areas on other sides of the building. Although not a consideration for the variance, the children will have access to Lake Crescent Park, which is across Royal York Road.

Mr. Rendl noted that a deficiency in landscaped open space still remained but, in his opinion, represented a trade-off between more landscaping and having sufficient parking, which, in his opinion was "a desirable feature to have".

Policies 1. Adequate and equitable access to community services and local institutions will be encouraged by: . . .b) improving and expanding local community service facilities and local institutions in established neighbourhoods that are under or poorly served;

I find that since four of the five variances represent a preexisting condition and the fifth is occasioned by the need for the site to accommodate required on-site parking, the general intent of the zoning by-law is maintained.



Modifications to the parking layout

Diagram 3 shows the final site plan with modifications agreed to by Ms. Canejo.

1. Simplified signage. The original condition shared spaces between parent as staff. Based on Mr. Seegobin's critique, agreed to by Mr. Pernicki (who was retained after this signage was developed), parent and staff parking will be separated.
2. Introduction of one accessible parking space as required under *the Accessibility for Ontarians with Disabilities Act, 2005*.
3. Increase in the width of parking space 7 to conform to the greater width standard when a space is obstructed by a fence.

4. Parking spaces at the rear to be paved.
5. In order to gain more space for these modifications, the landscaped open space has been decreased from 13.8% to 12.5%.

I am of the opinion that these amendments to the original application are minor and do not require notice under subsection 45 (18.1) of the *Planning Act*.

I now consider the evidence of Mr. Seegobin.

The increase in traffic volumes on Lake Crescent.

The subject site is on the southwest corner of Lake Crescent, a one-way east bound local street. All parents who drive are expected to access the day care travelling by Royal York Road. To be able to access Lake Crescent they must drive west on Symons or Murrie, then take Dwight and come east on Lake Crescent. They will then turn into the Canejo parking lot, leave and continue east to Royal York.

Mr. Seegobin wrote:

From the NexTrans report, the existing traffic volumes during the weekday AM peak hour is 53 vehicles travelling eastbound on Lake Crescent (one-way street). The subject site is expected to generate **an additional 18 auto trips** eastbound travelling Lake Crescent during the same weekday AM peak hour, for total traffic volumes of 71 vehicles. This equates to an approximate notable increase of 25% increase in traffic volumes (18 vehicles / 71 vehicles) on Lake Crescent that would potentially have to circle through the residential neighbourhood to access the development (due to the one-way operations of the local road network). (my bold)

In cross-examination, Mr. Seegobin more or less agreed with Mr. Pernicki that the traffic volumes are low; Mr. Pernicki characterizing the increase as “negligible” and Mr. Seegobin as “manageable”, particularly in relation to Mr. Seegobin’s own evidence that the street’s maximum volume is 1250 cars per hour. I find an increase of traffic is low; 18 vehicles per peak hour is one extra car every three minutes.

Volumes are not the critical issue; intersections levels of service are. On this issue, Mr. Seegobin agreed entirely with Mr. Pernicki that the levels of service of the Lake Crescent/Royal York Road intersection would not be affected.

Disobeying the one-way signs

Mr. Seegobin wrote: “daycare traffic approaching the site from Royal York Road may ignore the existing one-way traffic operations on Lake Crescent to save time instead of circling through the neighbourhood.” Mr. Pernicki conducted traffic counts in the relevant neighbourhood and did not yield any evidence of motorists going the wrong way. Mr. Seegobin conducted no surveys in this area. In my opinion, Mr. Seegobin’s

statement is speculative. Going the wrong way on a one-way street is a serious and dangerous violation of traffic laws, which in my view, is unlikely to occur.

The need for proxy studies

Mr. Seegobin considered that operations of other daycare sites should have been studied. Mr. Pernicki testified this was only necessary when enacting the zoning by-law in the first instance. He said, in this case the use is permitted and “we are meeting the zoning requirement and I’m of the opinion that it is a very robust requirement”. Nonetheless, he went on to say that “You never know”, and while he did not expect there to be an overflow, on street parking on the south side of Lake Street was “available”.

As I state later, the zoning standard for parking is a City wide standard, and Traffic Planning adapted that standard to this site; this is not the forum for a rezoning.

Proxy site at 122 Jutland

Nonetheless I am willing to listen to Mr. Seegobin’s evidence on proxy sites. He surveyed Islington Village Child Care Centre, 122 Jutland Avenue¹¹. The gross floor area of this daycare centre is about 50% larger than the subject (640 m² vs. 420 m²), with 15 parking spaces (subject site 9 spaces). Mr. Seegobin observed the site on two occasions, Monday, May 7 and Thursday June 7, 2018. Drop off of children occurred between 7:30 and 9:30 with a peak around 8:30 a.m., and that the typical stay was from between 5 to 6 minutes. Based on this observation, he concluded that the actual demand was about 16 spaces. He said when this observed demand is scaled down to Ms. Canejo’s projected 54 children, this would translate to a peak demand of about 10 spaces.

Although Mr. Seegobin and Mr. Pernicki came to somewhat opposite final conclusions, there were a number of common intermediate facts on which they seem to have agreed. They both found that demand is spread over a roughly two-hour period. They agree that drop off times were very short and there wasn’t much lingering. Mr. Seegobin found, and Mr. Pernicki left the door open to the possibility, that occasional on-street, and possibly illegal parking would occur. If this occurs, it would have to be handled by traffic by-law enforcement.

Mr. Seegobin’s observation that even the legally prescribed parking space supply may occasionally be inadequate raises an important legal issue. I asked Mr. Elmadany (lawyer for the City) how someone who complies with a legal standard such as use, or parking, can be penalized just for seeking an unrelated variance? He replied that

¹¹ Jutland Avenue is south of Norseman, north of The Queensway and just off of Islington Avenue. It is also governed by the Etobicoke Code.

*DeGasperis*¹² supports the proposition that the “desirability” test under the *Planning Act* always requires a consideration of the public interest, and that a possibility of a parking shortfall was a public interest consideration as underlined in the following passage from *DeGasperis*:

14 The second test requires the committee to consider and reach an opinion on the desirability of the **variance** sought for the appropriate development or use of the land, building or structure. This includes a consideration of the many factors that can affect the broad public interest as it relates to the development or use

15 Accordingly, in my view the Board was required to consider each **variance** sought and reach an opinion as to whether or not it, either alone or together with the other **variances** sought, was desirable for the appropriate use of the subject property. The issue was not whether the **variance** was desirable from the perspective of the *DeGasperis*' plans for their home but, rather, whether it was desirable from a planning and public interest point of view. (my bold)

The issue in this case, as Mr. Elmadany specified, in pretrial discussions, is the adequate “implementation of the **conditions**”. *DeGasperis* speaks only to the tests for variances. Mr. Seegobin and the residents had almost nothing to say about the five variances on page 2 and therefore I cannot find that *DeGasperis* allows me override either directly or indirectly a legal standard.

Under the Etobicoke Code, both the Jutland and Royal York sites comply with the zoning requirement of 1 space for each staff person and indeed Traffic Planning specifically negotiated with Ms. Canejo to lower her expectations so that she met this standard. If the City has issue with the standard, then it should revise it by zoning amendment. The latest amendment in 2013 did revise the standard, but downward, from nine spaces to three.

Mr. Elmadany stated that the project should be considered “as a whole”, not with respect to one or more individual variances “in the abstract”. This I am prepared to do and find that certainly this is an appropriate use of the building at an appropriate location—in a residential neighbourhood, well served by public transit and bicycle lanes, and the service it provides is desirable for the residents of Toronto, who face waiting lists at most day care facilities. Demand for such service is demonstrated by the evidence of Ms. Perkins-Young.

There is a relationship between the landscaped open space variance and parking spaces, in that Traffic Planning staff negotiated an increase in on-site parking, and perhaps Ms. Canejo would have preferred more landscaped open space instead of

¹².2005 Carswell Ont 2913, [2005] O. J. no. 2890

pavement. Planning is a matter of making choices and in my opinion, this was a reasonable balancing of competing interests by both parties (i.e., City staff and owner) to achieve a consensual solution, which is one goal of the planning process.

The risk of spillover traffic operations

Having observed spillover traffic impacts at elementary school sites, the residents are concerned that similar effects will take place on Lake Crescent. A petition of 70 names is against the day care centre. We don't know if the signers are aware that the use is permitted and has triple the parking spaces required by the harmonized by-law. Messrs. Mackie and Passfield and the City attack the conditions imposed by Traffic Planning as being insufficient to guarantee that there will be little change in their daily lives. I do not believe that spillover will occur, based on Mr. Pernicki's evidence that the arrival times will be spread out over a two-hour period instead of peaking at 9 am as for elementary school sites. But I agree, there are no guarantees, and I am making a decision as directed by the *Planning Act*, based on my best assessment of the evidence.

The Traffic Planning's manager's letter of January 3, 2018 to the Committee stated that his department had no objection provided that 10 conditions were imposed, of which number 4 reads:

4. The site plan be revised to explicitly include, to the satisfaction of this Division, a staff parking schedule to accommodate on-site pick-up and drop-off activities, . . . [and] that the schedule be revised such that the on-site pick-up and drop-off activity take place **primarily** within the parking lot accessed from Lake Crescent and that the two parking spaces that are accessed from Royal York Road be provided **primarily** for staff parking; i.e., minimal pick-up/drop-off activity for these two parking spaces; (my bold)

Mr. Mackie said, once the building goes up "‘primarily’ goes out the window, and basically you're going to do what you want to do".

A condition is an event that must occur before another event can take place. Under the *Planning Act*, there is no process that permits a decision maker to supervise the site once the minor variance is granted. It would be unfair to Ms. Canejo who will have made investments in reliance on the building permit, I don't believe that this is the position of the residents or the City. It was open to both to suggest more "advisable" conditions other than those suggested by Traffic Planning. However, none was forthcoming, and Mr. Elmadany specifically refused to pick out a lower number of children as an alternative condition.

Mr. Pernicki, who has considerable experience studying day care centres, suggested that because the operator and parents are interested in a long-term, problem-free relationship, that they would work together to solve problems. This seems reasonable from common sense. Mr. Seegobin's assertion that his observed peak demand over two attendances at Jutland should be 16 rather than 15 suggests that the legal standard is not far off the mark. I gather he chose the very worst incidents over a two-hour observation which may have been for a few minutes. The legal standard is a societal compromise among many competing interests, one being the cost to owner of an unused asset during non-peak periods. Mr. Pernicki also indicated that it is unlikely that the two staff spaces would all be used; wages for workers are not sufficient for them to buy a car, which I find is plausible.

In the light of my decision, I would suggest that an arrangement be initiated between residents of the area and the operator/parents to consult on issues in an orderly way.

Conclusion

The four tests under the *Planning Act* have been demonstrated. If there are problems with the wording of the final order, would the parties please speak to me. I thank Messrs. Mackie and Passfield for what is obviously a great deal of research and neighbourhood consultation and for faithfully attending the two hearing days.

ORDER AND DECISION

I authorize the variances in Table 1, subject to the following conditions:

1. Renovation to be substantially in accordance with the plans proposed by Fine Lines Design, Ex. 1, pages 39 – 46;
2. Acceptance by the applicant of the conditions proposed by Traffic Planning Services report dated Jan 3, 2018, Ex. 1, p 128-9, with the following modifications to the Site Plan:
 - (a) Condition 4: Site plan to be revised such that the 2 parking spaces that are accessed from Royal York Road be provided exclusively for staff parking;
 - (b) Condition 5: Signage to be revised to reflect the revisions to condition 4; and
 - (c) Condition to be added: That the width of Parking Spot 7 be increased to 2.9 m. (obstructed), and the width of Parking Spot 1 be increased to 3.4* m. (accessible)¹³.

¹³ *The minimum width of an accessible parking space is 3.4 metres, according to O. Reg. 191/11, made under *Ontarians with Disabilities Act*, Section 80.34 (1) & 80.36

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 18 111586 S45 06 TLAB

The conditions set out above are shown on Site Plan Ex. 1 p. 37, revised July 18, 2018, in Diagram 3 of this decision.



Recoverable Signature

X

Ted Yao

Ted Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao

(1)1. The minimum width of an accessible parking space is 3.4 m, according to By-law 569-2013 S. 200.15.1(B) as amended by By-law 579-2017.